

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Maine

OFFICIAL

TRANSFER OF ASSETS

1917(c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level of care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

— The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905(a) (7));

Home and community care for functionally disabled and elderly adults (section 1905(a) (22));

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a) (24).

— The following other long-term care services for which medical assistance is otherwise under the agency plan:

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3. Penalty Date--The beginning date of each penalty period imposed for an uncompensated transfer of assets is:

X the first day of the month in which the asset was transferred;

___ the first day of the month following the month of transfer.

4. Penalty Period - Institutionalized Individuals--

In determining the penalty for an institutionalized individual, the agency uses:

X the average monthly cost to a private patient of nursing facility service in the agency;

___ the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.

5. Penalty Period - Non-institutionalized Individuals--

The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the monthly cost of nursing facility services;

___ imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

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6. Penalty period for accounts of transfer less than cost of nursing facility care--

- a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:

X does not impose a penalty;

___ imposes a penalty for less than a full month, based on the proportion of the agency's private nursing facility rate that was transferred.

- b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:

X does not impose a penalty;

___ imposes a series of penalties, each for less than a full month.

7. Transfers made so that penalty periods would overlap--

The agency:

___ totals the value of all assets transferred to produce a single penalty period;

X calculates the individual penalty periods and imposes them sequentially.

8. Transfers made so that penalty periods would not overlap--

The agency:

X assigns each transfer its own penalty period;

___ uses the method outlined below:

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9. Penalty periods - transfer by a spouse that results in a penalty period for the individual--

- (a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

Whether there is a division of the penalty and, if so, how it will be divided, is decision of the spouses.

- (b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset--

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

☐ The agency will impose partial month penalty periods.

~~When~~ a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

☐ For transfers of individual income payments, the agency will impose partial month penalty periods.

☐ For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

☐ The agency uses an alternate method to calculate penalty periods, as described below;

A penalty is imposed for each income payment.

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11. Imposition of a penalty would work an undue hardship-

The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

1. All denials/closures due to a transfer of assets will include a written notice that an "undue hardship" provision exists.
2. A claim of undue hardship must be made no later than 30 days from the date of the denial/closure notice.
3. A decision on a claim of undue hardship will be made within 30 days of the claim being made.
4. Any adverse action including a denial of a claim of undue hardship can be made within 30 days of the notice of denial. Applicants/recipients are given written notice of this right.

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

1. The individual was exploited as determined by the Department of Human Services Adult Protective Services, or all of the following:
2. Neither the individual or spouse have the means to pay for nursing care services taking into consideration all exempt and non-exempt assets and income
3. The recipient of the transferred asset is unable to make the value of the transfer or any part of it available to pay for the individual's nursing care,
4. The individual must make all reasonable efforts, including taking appropriate legal action to recover the transferred asset or its equivalent value. The individual must cooperate with the Department and any recovery activity that is undertaken,
5. If the transferred assets or equivalent value are recovered, the individual will reimburse Medicaid for funds expended as a result of the approved claim of undue hardship, and
6. It is the responsibility of the individual to prove the claim of undue hardship.

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